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10/750,525	12/30/2003	Jukka Linjama	850.0003.U1(US)	9227
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HARRINGTON & SMITH, PC			KE, PENG	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/750,525

Applicant(s)

LINJAMA, JUKKA

Examiner

Peng Ke

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/30/03
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/26/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is responsive to communications: Preliminary Amendment, filed on 12/30/03.

Claims 1-19 are pending in this application. Claims 1, and 10 and 19 are independent claims. In the Amendment, filed on 12/30/03, claims 1, 4, 9, 10, 15, 18 and 19 were amended.

Priority

It is noted that this application appears to claim subject matter disclosed in prior Application No. Finland 20022282, filed 12/30/2002. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where

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applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

Claim Rejections - 35 USC § 101

35 U.S.C. § 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

As set forth in MPEP 2106 (II) (A):

The claimed invention as a whole must accomplish a practical application. That is, it must produce a “useful, concrete and tangible result.” State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of “real world” value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (Brenner v. Manson, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96); In re Ziegler, 992, F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)). Accordingly, a complete disclosure should contain some indication of the practical application for the claimed invention, i.e., why the applicant believes the claimed invention is useful.

Apart from the utility requirement of 35 U.S.C. 101, usefulness under the patent eligibility standard requires significant functionality to be present to satisfy the useful result aspect of the practical application requirement. See Arrhythmia, 958 F.2d at 1057, 22 USPQ2d at 1036. Merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make the invention eligible for patenting. For example, a claim directed to a word processing file stored on a disk may satisfy the utility requirement of 35 U.S.C. 101 since the information stored may have some “real world” value. However, the mere fact that the claim may satisfy the utility requirement of 35 U.S.C. 101 does not mean that a useful result is achieved under the practical application requirement. The claimed invention as a whole must produce a “useful, concrete and tangible” result to have a practical application

As set forth in MPEP 2106 (IV) (B) (1):

Claims to computer-related inventions that are clearly nonstatutory fall into the same general categories as nonstatutory claims in other arts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature which constitute “descriptive material.” Abstract ideas, Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, Schrader, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable. Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” In this context, “functional descriptive material” consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of “data structure” is “a physical or logical relationship among data elements, designed to support specific data manipulation functions.” The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) “Nonfunctional descriptive material” includes but is not limited to music, literary works and a compilation or mere arrangement of data. Both types of “descriptive material” are nonstatutory when claimed as descriptive material per se. Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and Warmerdam, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

As set forth in MPEP 2106 (IV)(B)(1)(a):

Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs, are not physical things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. Accordingly, it is important to distinguish claims that define descriptive material *per se from claims* that define statutory inventions.

Products may be either machines, manufactures, or compositions of matter.

A machine is "a concrete thing, consisting of parts or of certain devices and combinations of devices." *Burr v. Duryee*, 68 U.S. (1 Wall.) 531, 570 (1863).

If a claim defines a useful machine or manufacture by identifying the physical structure of the machine or manufacture in terms of its hardware or hardware and software combination, it defines a statutory product. See, e.g., *Lowry*, 32 F.3d at 1583, 32 USPQ2d at 1034-35; *Warmerdarn*, 33 F.3d at 1361-62, 31 USPQ2d at 1760.

Office personnel must treat each claim as a whole. The mere fact that a hardware element is recited in a claim does not necessarily limit the claim to a specific machine or manufacture. Cf. *In re Iwahashi*, 888 F.2d 1370, 1374-75, 12 USPQ2d 1908, 191 1-12 (Fed. Cir. 1989), cited with approval in *Alappat*, 33 F.3d at 1544 n.24, 31 USPQ2d at 1558 n.24.

Claim 19 is rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

As per claim 19, the claimed a computer program product for an electronic device for providing interaction between a user and said electronic device. A computer program does not fall within one of statutory categories of useful process, machine, manufacture, composition of matter, or any new and useful improvement thereof. Therefore the claim is non-statutory

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Orchard Patent
US 6,834,249

As per claim 1, Orchard teaches a method for providing an interaction between a user of an electronic device, and the electronic device, said device comprising an user interface and a motion sensor capable of detecting three dimensional motion, characterized in that the method comprises:

the user providing a gesture by touching the device, said gesture comprising at least one component of the three dimensions, (see Orchard; column 1, lines 45-60; column 8, lines 8-40; Orchard teaches detecting motion in Y-axis, X-axis, and Z-axis);

the motion sensor of the device detecting said gesture (see Orchard; column 1, lines 45-60; Orchard teaches a motion detection sensors and a motion control

agent) and

the device providing a feedback in response to said gesture detection. (see Orchard; column 8, lines 18-25; upon detecting motion the highlighted active region is moved one icon to the right.)

As per claim 2, Orchard teaches a method according to claim 1. Orchard teaches characterized in that said gesture selects a function of the device. (see Orchard; column 8, lines 18-25; upon detecting motion the highlighted active region is moved one icon to the right and applications are functions of a device.)

As per claim 3, Orchard teaches a method according to claim 1, characterized in that said gesture activates a function of the device. (see Orchard; column 8, lines 18-25; upon detecting motion the highlighted active region is moved one icon to the right and applications are functions of a device.)

As per claim 4, Orchard teaches a method according to claim 2. Orchard teaches characterized in that said function is a scroll of a list in the user interface of the device. (see Orchard; column 7, lines 65-column 8, lines 10; Scrolling a page of content

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is a scrolling a list)

As per claim 5, Orchard teaches a method according to claim 1. Orchard teaches characterized in that said gesture moves a game cursor on the display of the device in two dimensions. (see Orchard; column 8, lines 18-25; upon detecting motion the highlighted active region is moved one icon to the right and applications are functions of a device and the moved icon is a game cursor and movement from left to right is a two dimensional movement)

As per claim 6, Orchard teaches a method according to claim 5. Orchard further teaches characterized in that a further gesture in a third dimension of the device accepts the move made by the user in two other dimensions. (see Orchard; column 8, lines 30-40, Detecting motion in z-axis cause the application to be launched and highlighting and launching are selection confirmation)

As per claim 7, Orchard teaches a method according to claim 2. Orchard teaches characterized in that said selection is confirmed by said feedback. (see Orchard; column 8, lines 30-40, Detecting motion in z-axis cause the application to be

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launched and highlighting and launching are selection confirmation)

As per claim 8, Orchard teaches a method according to claim 3. Orchard teaches characterized in that said activation is confirmed by said feedback. (see Orchard; column 8, lines 30-40, Detecting motion in z-axis cause the application to be launched and highlighting and launching are selection confirmation visual feedback)

As per claim 9, Orchard teaches a method according to claims 7. Orchard further teaches characterized in that said feedback is at least one of the following: a tactile feedback, an audible feedback or a visual feedback. (see Orchard; column 8, lines 30-40, Detecting motion in z-axis cause the application to be launched and highlighting and launching are selection confirmation visual feed back)

As per claim 10, Orchard teaches an electronic device for providing interaction between a user of said electronic device, said device comprising an user interface and a motion sensor capable of detecting three dimensional motion, characterized in that the device comprises

detecting means for detecting a gesture comprising at least one component of the three dimensions which gesture is provided by at least one touch of the user, (see Orchard; column 1, lines 45-60; column 8, lines 8-40; Orchard teaches detecting motion in Y-axis, X-axis, and Z-axis)

feedback means for providing a feedback in response to said detected gesture. (see Orchard; column 1, lines 45-60; Orchard teaches a motion detection sensors and a motion control agent)

As per claim 11, Orchard teaches a device according to claim 10. Orchard further teaches characterized in that said detecting means are arranged to select a function in response to said detected gesture. (see Orchard; column 8, lines 18-25; upon detecting motion the highlighted active region is moved one icon to the right and applications are functions of a device.)

As per claim 12, Orchard teaches a device according to claim 10. Orchard further teaches characterized in that said detecting means are arranged to activate a function in response to said detected gesture. (see Orchard; column 8, lines 18-25; upon detecting motion the highlighted active region is moved one icon to the right and applications are functions of a device.)

As per claim 13, Orchard teaches a device according to claim 11. Orchard further teaches characterized in that said feedback means are arranged to inform the user about the confirmation of said selection. (see Orchard; column 8, lines 30-40, Detecting motion in z-axis cause the application to be launched and highlighting and launching are selection confirmation)

As per claim 14, Orchard teaches A device according to claim 12. Orchard further teaches characterized in that said feedback means are arranged to inform the user about the confirmation of said activation. (see Orchard; column 8, lines 30-40, Detecting motion in z-axis cause the application to be launched and highlighting and launching are selection confirmation)

As per claim 15, Orchard teaches a device according to claims 13. Orchard further teaches characterized in that said feedback means are arranged to provide at least one of the following feedback: a tactile feedback, an audible feedback or a visual feedback. (see Orchard; column 8, lines 30-40, Detecting motion in z-axis cause the

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application to be launched and highlighting and launching are selection confirmation visual feedback)

As per claim 16, Orchard teaches an electronic device according to claim 10. Orchard further teaches characterized in that said gesture is arranged to move a game cursor on the display of the device in two dimensions. (see Orchard; column 8, lines 30-40, Detecting motion in z-axis cause the application to be launched and highlighting and launching are selection confirmation)

As per claim 17, Orchard teaches a method according to claim 16. Orchard further teaches characterized in that a further gesture in a third dimension of the device is arranged to accept the movement made by the user in two other dimensions. (see Orchard; column 8, lines 30-40, Detecting motion in z-axis cause the application to be launched and highlighting and launching are selection confirmation)

As per claim 18, Orchard teaches a device according to claims 10. characterized in that said device is at least one of the following: a portable game console or a wireless

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communication device. (see Orchard; column 6, lines 50-55; PDA is a wireless communication device)

As per claim 19, Orchard teaches a computer program product for an electronic device for providing interaction between a user of said electronic device, said device comprising an user interface and a motion sensor capable of detecting three dimensional motion, characterized in that the computer program product comprises

computer program code for causing the device to detect at least one gesture of the user touching the device, said gesture comprising at least one component of the three dimensions, (see Orchard; column 1, lines 45-60; column 8, lines 8-40; Orchard teaches detecting motion in Y-axis, X-axis, and Z-axis)

computer program code for causing the device to provide a feedback in response to said detected gesture. (see Orchard; column 1, lines 45-60; Orchard teaches a motion detection sensors and a motion control agent)

Conclusion

The following patents are cited to further show the state of the art with respect to motion sensing system:

Eriksson: US Patent 6,572,883 discloses a illness Curative comprising Fermented Fish

Wong : US Patent 6,816,154 discloses a optical sensor based User interface for a portable electronic device

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peng Ke whose telephone number is (571) 272-4062. The examiner can normally be reached on M-Th and Alternate Fridays 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine L. Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

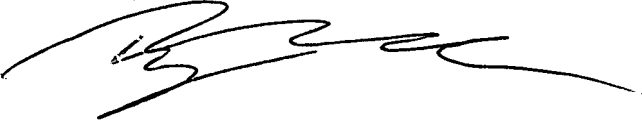
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Patent Examiner Peng Ke

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A handwritten signature in black ink, appearing to be 'Peng Ke', written in a cursive style.